

House Bill 797

By: Representatives Smith of the 13th, Benton of the 31st, Williams of the 4th, Greene of the 149th, Jamieson of the 28th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to authorize the imposition of a joint county and municipal sales and use tax on motor fuel within special districts; to provide for applicability with respect to the ceiling on local sales and use taxes; to establish special districts; to provide for procedures, conditions, and limitations for the imposition, collection, disbursement, and removal of the tax; to provide for administration by the state revenue commissioner; to require referendum approval of the imposition or discontinuation of the tax; to provide for all related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by striking subsection (b) of Code Section 48-8-6, relating to prohibitions regarding the imposition of certain local taxes, and inserting in its place a new subsection (b) to read as follows:

“(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)

1 of the Constitution; and the laws enacted pursuant to such constitutional amendment;
2 provided, however, that the exception provided for under this paragraph shall only apply
3 in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code
4 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay
5 project or projects, a sewer capital outlay project or projects, a water and sewer capital
6 outlay project or projects, water and sewer projects and costs as defined under
7 paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to
8 which the county has entered into an intergovernmental contract with a municipality, in
9 which the average waste-water system flow of such municipality is not less than 85
10 million gallons per day, allocating proceeds to such municipality to be used solely for
11 water and sewer projects and costs as defined under paragraph (3) of Code Section
12 48-8-200. The exception provided for under this paragraph shall apply only during the
13 period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for
14 under this paragraph shall not apply in any county in which a tax is being imposed under
15 Article 2A of this chapter;

16 (3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the
17 amount in excess of the initial 1 percent sales and use tax and in the event of a newly
18 imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent
19 sales and use tax;

20 (4) A sales and use tax levied under Article 4 of this chapter; or

21 (5) A sales and use tax levied under Article 5 of this chapter.

22 If the imposition of any otherwise authorized local sales tax, local use tax, or local sales
23 and use tax would result in a tax rate in excess of that authorized by this subsection, then
24 such otherwise authorized tax may not be imposed."

25 SECTION 2.

26 Said chapter is further amended by adding a new article at the end thereof, relating to joint
27 county and municipal motor fuel sales and use tax, to be designated Article 5, to read as
28 follows:

29 "ARTICLE 5

30 48-8-230.

31 As used in this article, the term 'qualified municipality' means only those incorporated
32 municipalities which impose a tax other than the tax authorized by this article and which
33 provide at least three of the following services:

34 (1) Water;

- (2) Sewage;
- (3) Garbage collection;
- (4) Police protection;
- (5) Fire protection; or
- (6) Library.

48-8-231.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

48-8-232.

When the imposition of a joint county and municipal motor fuel sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax upon dealers who sell at retail or use motor fuel within the special district at the rate of not less than 1¢ nor more than 10¢ per gallon on the retail sale price less the taxes imposed by Code Sections 48-9-3 and 48-9-14 and any tax imposed under Article 8 of Chapter 9 of this title. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. Dealers shall be compensated; and penalties and interest shall be imposed in the same manner as for purposes of Article 1 of this chapter. This tax shall be subject only to the exemptions provided in Code Section 48-9-3.

48-8-233.

(a) Whenever the governing authority of any county or qualified municipality located wholly or partially within a special district wishes to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-232 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and

1 in the manner authorized under Code Section 21-2-540. The election superintendent shall
2 cause the date and purpose of the election to be published once a week for two weeks
3 immediately preceding the date of the election in the official organ of the county. The
4 ballot shall have written or printed thereon the following:

5 '() YES Shall a motor fuel sales and use tax at the rate of __¢ per gallon be levied
6 () NO within the special district within _____ County?'

7 (b) All persons desiring to vote in favor of levying the tax shall vote 'Yes' and all persons
8 opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in
9 favor of levying the tax, then the tax shall be levied in accordance with this article;
10 otherwise, the tax may not be levied, and the question of the imposition of the tax may not
11 again be submitted to the voters of the special district until after 24 months immediately
12 following the month in which the election was held. It shall be the duty of the election
13 superintendent to hold and conduct such elections under the same rules and regulations as
14 govern special elections. It shall be the election superintendent's further duty to canvass
15 the returns, declare the result of the election, and certify the result to the Secretary of State
16 and to the commissioner. The expense of the election shall be borne by the county whose
17 geographical boundary is conterminous with that of the special district holding the election.

18 48-8-234.

19 If the imposition of the tax provided in Code Section 48-8-232 is approved in a referendum
20 election as provided by Code Section 48-8-233, the governing authority of the county
21 whose geographical boundary is conterminous with that of the special district and the
22 governing authority of each qualified municipality located wholly or partially within the
23 district shall each adopt a resolution during the first 30 days following the certification of
24 the result of the election imposing the tax authorized by Code Section 48-8-232 on behalf
25 of the county and each qualified municipality located wholly or partially within the special
26 district. The resolution shall be effective on the first day of the next succeeding calendar
27 quarter which begins more than 80 days after the adoption of the resolution. A certified
28 copy of the resolution shall be forwarded to the commissioner so that it will be received
29 within five days after its adoption.

30 48-8-235.

31 The tax levied pursuant to this article shall be exclusively administered and collected by
32 the commissioner for the use and benefit of each county whose geographical boundary is
33 conterminous with that of a special district and of each qualified municipality located
34 wholly or partially therein. Such administration and collection shall be accomplished in the

1 same manner and subject to the same applicable provisions, procedures, and penalties
2 provided in Article 1 of this chapter; provided, however, that all moneys collected from
3 each dealer by the commissioner shall be applied first to such dealer's liability for taxes
4 owed the state.

5 48-8-236.

6 Each tax report remitting taxes collected under this article shall separately identify the
7 location of each sale or use of motor fuel for which any of the taxes remitted were collected
8 in order to facilitate the determination by the commissioner that all taxes imposed by this
9 article are collected and distributed according to situs of sale.

10 48-8-237.

11 (a) The proceeds of the tax collected by the commissioner for each special district under
12 this article shall be disbursed as soon as practicable after collection as follows:

13 (1) One percent of the amount collected shall be paid into the general fund of the state
14 treasury in order to defray the costs of administration; and

15 (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining
16 proceeds of the tax shall be distributed to the governing authority of each qualified
17 municipality within the special district and to the governing authority of the county whose
18 geographical boundary is conterminous with that of the special district for the purpose
19 of assisting such political subdivisions in funding all or any portion of street, road, and
20 bridge construction and maintenance, including but not limited to curbs, sidewalks, street
21 lights, and devices to control the flow of traffic on streets and roads.

22 (b) The net proceeds of the tax shall be distributed to the county whose boundary is
23 conterminous with the special district and to each qualified municipality within the special
24 district according to population. Each qualified municipality shall receive a share of the
25 proceeds based on the population of the municipality which is within the special district.
26 The county shall receive a share of the proceeds based on the population of the county
27 which is outside of any qualified municipality. Each local government's share of the net
28 proceeds shall be determined pro rata on the basis of the population assigned by this
29 subsection to that local government as a fraction of the total population of the special
30 district. For purposes of this subsection, population shall be determined according to the
31 United States decennial census of 2000.

32 (c) If there comes into existence within any special district a qualified municipality which
33 was not a qualified municipality as of the date of imposition of the tax, such new qualified
34 municipality may give notice of its existence and its desire to share in the proceeds of the
35 tax by adoption of a resolution to impose the tax. Upon receipt of a certified copy of such

1 a resolution, the commissioner shall, unless the commissioner determines that the
2 requesting entity is not a qualified municipality, commence to withhold from the county
3 and distribute to the new qualified municipality its share of the net proceeds of the tax, as
4 determined under subsection (b) of this Code section. Such new distribution shall apply
5 to taxes collected on and after the first day of the first calendar quarter which begins more
6 than 30 days after the date upon which the commissioner determines that the new qualified
7 municipality is eligible to receive a share of the net proceeds of the tax.

8 (d) If the commissioner determines that a qualified municipality entitled to receive tax
9 proceeds under this article has ceased to be a qualified municipality, the commissioner shall
10 thereafter distribute the percentage of the net proceeds of the tax to which that qualified
11 municipality was entitled to the county which is conterminous with the special district.

12 48-8-238.

13 (a) Whenever the governing authority of any county or qualified municipality located
14 wholly or partially within a special district in which the tax authorized by this article is
15 being levied wishes to submit to the electors of the special district the question of whether
16 the tax shall be discontinued, the governing authority shall notify the election
17 superintendent of the county whose geographical boundary is conterminous with that of the
18 special district by forwarding to the superintendent a copy of a resolution of the governing
19 authority calling for the referendum election. Upon receipt of the resolution, it shall be the
20 duty of the election superintendent to issue the call for an election for the purpose of
21 submitting the question of discontinuing the levy of the tax to the voters of the special
22 district for approval or rejection. The election superintendent shall issue the call and shall
23 conduct the election on a date and in the manner authorized under Code Section 21-2-540.
24 The election superintendent shall cause the date and purpose of the election to be published
25 once a week for two weeks immediately preceding the date of the election in the official
26 organ of the county. The ballot shall have written or printed thereon the following:

27 '() YES Shall the motor fuel sales and use tax at the rate of __¢ per gallon being
28 () NO levied within the special district within _____ County be
29 terminated?'

30 (b) All persons desiring to vote in favor of discontinuing the tax shall vote 'Yes' and all
31 persons opposed to discontinuing the tax shall vote 'No'. If more than one-half of the votes
32 cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first
33 day of the second calendar quarter following the month in which the commissioner receives
34 the certification of the result of the election; otherwise, the tax shall continue to be levied,
35 and the question of the discontinuing of the tax may not again be submitted to the voters

1 of the special district until after 24 months immediately following the month in which the
2 election was held. It shall be the duty of the election superintendent to hold and conduct
3 such elections under the same rules and regulations as govern special elections. It shall be
4 the election superintendent's further duty to canvass the returns, declare and certify the
5 result of the election, and certify the result to the Secretary of State and to the
6 commissioner. The expense of the election shall be borne by the county whose
7 geographical boundary is conterminous with that of the special district holding the election.

8 48-8-239.

9 No tax provided for in Code Section 48-8-232 shall be imposed upon motor fuel which is
10 used or which is ordered by and delivered to the purchaser at a point outside the
11 geographical area of the special district in which the joint tax is imposed regardless of the
12 point at which title passes.

13 48-8-240.

14 The commissioner shall have the power and authority to promulgate such rules and
15 regulations as shall be necessary for the effective and efficient administration and
16 enforcement of the collection of the tax authorized to be imposed by this article."

17 **SECTION 3.**

18 This Act shall become effective upon its approval by the Governor or upon its becoming law
19 without such approval.

20 **SECTION 4.**

21 All laws and parts of laws in conflict with this Act are repealed.